

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JON STURGEON,

Plaintiff,

vs.

No. CIV 02-1317 JB/WDS

ABF FREIGHT SYSTEMS, INC.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on Defendant ABF Freight System, Inc.'s Motion for Summary Judgement on Back-Pay, Front-Pay, and Employment Benefits, filed October 1, 2003 (Doc. 86). The primary issue is whether the law required Sturgeon to mitigate damages in connection with his termination by actually seeking comparable employment. Because the Court granted Defendant's Motion for Summary Judgment on Plaintiff's ADA and Retaliation Claims, filed October 29, 2003 (Doc. 94), dismissing Plaintiff's only remaining claims, the Court finds that this motion is moot and should, therefore, be dismissed.

**BACKGROUND**

Defendant ABF Freight System, Inc. ("ABF") maintains a facility in Albuquerque, New Mexico for, among other things, servicing freight vehicles used in its business. Plaintiff Jon Sturgeon, a member of the Teamsters Union, worked at ABF servicing vehicles between 1978 and 2001, when he left employment after being asked to "steam clean" equipment at ABF. Citing a past respiratory problem, Sturgeon sues ABF, alleging discrimination under the Americans with Disabilities Act ("ADA") and the New Mexico Human Rights Act ("NMHRA") and breach of employment agreement

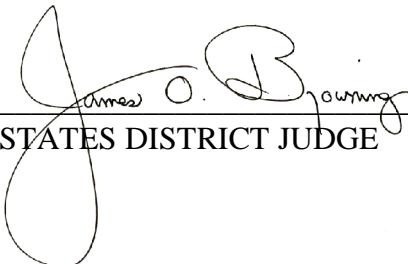
based on a claim of construction discharge. Sturgeon commenced this action on September 24, 2002.

Believing that looking for work following his departure "wasn't right" after 20 years with the company, see Deposition of Jon Sturgeon at 134 (Volume I)(taken March 26, 2003), Sturgeon did not seek alternative employment following his departure from ABF.

**LEGAL ANALYSIS**

Because Sturgeon allegedly did not mitigate his damages, ABF contends that it is not liable to Sturgeon for any alleged losses incurred in connection with his termination, regardless of the outcome of his case. The Court scheduled a hearing on this motion for January 8, 2004. Because, however, the Court granted ABF's motion for summary judgment on all remaining claims, the Court did not hear argument on this motion, and need not decide it.

**IT IS ORDERED** that the Defendant's Motion for Summary Judgment on Back-Pay, Front-Pay, and Employment Benefits is dismissed as moot.

  
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UNITED STATES DISTRICT JUDGE

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